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No. 88-1241

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

GWENDOLYN PRICE,

Petitioner,

v.

JOSEPH TANNER, HERBERT GREENHOLTZ, JR., JAMES W. PARIS, DON L. KNOWLES, and THE STATE BOARD OF WORKERS' COMPENSATION,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1.

Whether the court of appeals applied the proper standard of review in assessing the Petitioner's fourteenth amendment equal protection claim involving no fundamental right.

2.

Whether there is a rational basis for the distinction in Georgia law which provides for a set-off in workers' compensation awards for occupational disease for a preexisting disease and no similar set-off for workers who are otherwise injured and had a preexisting injury.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES..... iii

OPINIONS BELOW 1

JURISDICTION..... 1

STATEMENT OF THE CASE..... 1

LAW AND CITATION OF AUTHORITY 3

I. THE COURT OF APPEALS APPLIED THE PROPER STANDARD OF REVIEW IN ASSESSING THE PETITIONER'S EQUAL PROTECTION CHALLENGE TO STATE LAW..... 3

II. SEVERAL RATIONAL BASES SUPPORT THE DISTINCTION MADE BY THE GEORGIA LEGISLATURE..... 5

CONCLUSION 8

TABLE OF AUTHORITIES

Page

CASES

Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth., 825 F.2d 367 (11th Cir. 1987), *cert. denied*, ___ U.S. ___, 108 S. Ct. 1022 (1988) 7

City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) 6

Dandridge v. Williams, 397 U.S. 471 (1970) 3, 6

Jefferson v. Hackney, 406 U.S. 535 (1972) 6

Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981) 6, 7

Price v. Lithonia Lighting Co., 256 Ga. 49 (1986) 1

Price v. Tanner, 855 F.2d 820 (11th Cir. 1988) 1

Reed v. Reed, 404 U.S. 71 (1971) 6

Salyer Land Company v. Tulare Water District, 410 U.S. 719 (1973) 4

Sherbert v. Verner, 374 U.S. 398 (1963) 4

United States v. Carolene Prods. Co., 304 U.S. 144 (1938) 3, 4, 7

Vance v. Bradley, 440 U.S. 93 (1979) 6

Western and S. Life Ins. Co., 451 U.S. 648 (1981) 3, 6

Williams v. Rhodes, 393 U.S. 23 (1968) 4, 6

CONSTITUTIONS AND STATUTES:

28 U.S.C. § 1254(1) 1

O.C.G.A. § 34-9-285 ..... 2, 4, 5, 6

OPINIONS BELOW

The opinion of the court of appeals is reported at 855 F.2d 820 (11th Cir. 1988). The opinion of the district court is not reported. The opinion of the related case of *Price v. Lithonia Lighting Co.*, decided by the Georgia Supreme Court, is reported at 256 Ga. 49 (1986). All three opinions are attached to Petitioner's petition in appendixes A, B, and C, respectively.

JURISDICTION

The Petitioner invokes jurisdiction of this Court under 28 U.S.C. § 1254(1). Respondent states that the questions raised by the Petitioner are not consistent with the considerations governing review provided in Rule 17 of this Court.

STATEMENT OF THE CASE

In 1971 Petitioner Gwendolyn Price was diagnosed as having chronic bronchiectasis, a lung condition. In 1973, Price began a ten year period of employment working for Lithonia Lighting Company where she was exposed to various fumes and dust which aggravated her respiratory condition. Price stopped working for Lithonia Lightening in January, 1983, due to her continuing respiratory problems.

On January 11, 1983, Price filed a workers' compensation claim and was found by the administrative law judge to have sustained an occupational disease arising

out of the course of her employment which aggravated her preexisting lung condition. She was awarded $135.00 per week for her total disability.

On appeal to the State Board of Workers' Compensation, the award was reduced, pursuant to O.C.G.A. § 34-9-285, to $13.50 per week when the Board determined that only ten percent of Price's disability was attributable to the aggravation of her condition as a result of her employment. Price obtained an administrative review in the Superior Court of Rockdale County, Georgia, where the board's determination was affirmed. Price filed an application for discretionary appeal to the Georgia Supreme Court challenging the constitutionality of O.C.G.A. § 34-9-285. The Georgia Supreme Court analyzed the equal protection challenge under the Georgia and the United States Constitutions and, after applying the rational basis test, upheld the constitutionality of the statute. The award was raised, however, to $25.00 per week based upon Georgia's minimum award statute.

While awaiting the decision of the Georgia Supreme Court, Price brought this action in federal district court alleging that O.C.G.A. § 34-9-285 violated the equal protection clause of the fourteenth amendment because the statute provides for a restrictive rule for determining benefits for persons disabled by an occupational disease that does not apply to persons similarly situated who suffer an occupational disability from factors other than disease. The district court granted summary judgment for the Respondents, finding that the statute did not violate the equal protection clause because there were at least two rational bases for the distinction.

Petitioner then appealed to the United States Court of Appeals for the Eleventh Circuit which affirmed the district court finding that there was a rational basis for the Georgia statute and that the statute did not violate the equal protection clause. The court of appeals relied on a third justification for the statute which was raised for the first time before the appellate court. From that decision Price has brought this petition for writ of certiorari.

LAW AND CITATION OF AUTHORITY

I. THE COURT OF APPEALS APPLIED THE PROPER STANDARD OF REVIEW IN ASSESSING THE PETITIONER'S EQUAL PROTECTION CHALLENGE TO STATE LAW.

Petitioner has not alleged the existence of any fundamental right or suspect class in her equal protection challenge. The parties have agreed that the standard of review applicable to this case is the "rational basis" test. In applying this test a court is obligated to consider any legitimate state interest, however it comes before the court. *See Western and S. Life Ins. Co.*, 451 U.S. 648, 674 (1981); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 154 (1938). On appeal, the Appellee may assert any justification in support of a favorable judgment "whether or not that ground was relied upon or even considered by the trial court." *Dandridge v. Williams*, 397 U.S. 471, 475 n. 6 (1970).

The court of appeals correctly applied the rational basis test and, in analyzing the three asserted state purposes, found that at least one, encouraging the employment of the handicapped, was a legitimate state interest sufficient to sustain O.C.G.A. § 34-9-285.

Petitioner cites three cases to support her contention that Respondents could not raise the third rational basis for the first time before the court of appeals and that the record was insufficient to sustain the court's finding. *Sherbert v. Verner*, 374 U.S. 398 (1963); *Williams v. Rhodes*, 393 U.S. 23 (1968); *Salyer Land Company v. Tulare Water District*, 410 U.S. 719 (1973). None of these cases support the Petitioner's contentions. *Sherbert* and *Williams* are cases involving fundamental rights and, hence, require the "compelling state interest" test rather than the "rational basis" test. *Salyer*, which employed the rational basis test, involved the same kind of review as provided by the court of appeals in this case. There, this Court reviewed the legislation on its face and analyzed the statutory language to determine the possible purposes of the California legislature. In doing so, this Court found there to be a rational basis for the distinction created in the California statute, just as the court of appeals did in this case.

In employing the rational basis test to a constitutional analysis of a statute,

> . . . [S]uch inquiry, where the legislative judgment is drawn into question, must be restricted to the issue whether any state of facts either known *or which could reasonably be assumed* affords support for it. (Emphasis added).

United States v. Carolene Prods. Co., 304 U.S. at 154.

Hence, the review provided by the court of appeals in this case is precisely as this Court has repeatedly prescribed.

II. SEVERAL RATIONAL BASES SUPPORT THE DISTINCTION MADE BY THE GEORGIA LEGISLATURE.

There exist rational bases to support the distinction in Georgia law in determining benefits for persons disabled due to the aggravation of a preexisting condition by an occupational disease from those who suffer other occupational accidents. Although Georgia has no legislative history accompanying its statutes, a review of the statutory language and the facts of this case provide several rational bases which can be assumed as the legislative intent for the statute.

First, occupational diseases are widespread in a range of businesses in the industrial world. These industries are likely to sustain a heavy financial burden from increased claims. Section 34-9-285 serves to alleviate the economic burden on such industries.

Second, occupational diseases frequently have a gradual onset from day to day exposure to deleterious conditions. Where the worker suffered from a preexisting condition the problem of proof is both difficult and significant in determining the validity of a workers' compensation claim. Section 34-9-285 necessarily requires a close scrutiny of the proximate cause requirement in a workers' compensation claim. Since there has been no claim or showing of invidious discrimination in this case, such a classification is rationally justified.

Finally, Section 34-9-285 can be reasonably assumed to encourage the employment of those handicapped by disease. The language of the statute is rationally related to this objective and such objective is a legitimate state interest. *See Dandridge v. Williams*, 397 U.S. at 486 (1970).

Statutory classifications in the area of economics and social welfare do not violate the equal protection clause because they are imperfect. *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972). A legislature may attack a problem piecemeal and is not required to attack every aspect of a problem or not attack at all. *Jefferson v. Hackney*, 406 U.S. at 546; *Dandridge v. Williams*, 397 U.S. at 486-7. "[T]he fourteenth amendment does not deny to states the power to treat different classes of persons in different ways." *Reed v. Reed*, 404 U.S. 71, 75 (1971). Respondents need only present a set of facts which reasonably may be conceived to justify the classification. *Dandridge v. Williams*, 397 U.S. at 485. Legislation is presumed to be valid and should be sustained if the classification as drawn by the statute is rationally related to any legitimate state interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985); *Vance v. Bradley*, 440 U.S. 93, 97 (1979). The statute should not be overturned unless the varying treatment of different persons is so unrelated to the achievement of any combination of legitimate purposes that it can only be concluded that the legislature's actions were irrational. *Western and S. Life Insurance Company v. State Board of Equalization*, 451 U.S. at 674; *Vance v. Bradley*, 440 U.S. at 97.

The equal protection analysis does not require a determination of whether the legislation will fully achieve its articulated purposes. *Minnesota v. Clover Leaf*

Creamery Co., 449 U.S. 456, 466 (1981). A reviewing court does not sit as an arbiter of the wisdom or utility of the law. *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 825 F.2d 367, 370 (11th Cir. 1987) *cert. denied* ___ U.S. ___, 108 S. Ct. 1022 (1988). If the rational relationship question is at least debatable as to whether the Georgia legislature could have rationally decided that such a purpose would be achieved, then the statute must be upheld and the equal protection challenge denied. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. at 466; *United States v. Carolene Prods. Co.*, 304 U.S. at 144.

Accordingly, the grant of summary judgment by the district court was properly affirmed by the United States Court of Appeals and the petition for writ of certiorari should be denied.

CONCLUSION

For the foregoing reasons, Respondents request that this Honorable Court deny the petition for certiorari in this action.

Respectfully submitted,

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